

Streamlined Sales Tax Conforming States Committee
Chicago, Illinois
August 5-6, 2004

The following state delegates participated in the second meeting of the Conforming States. Votes of the group reported here are unanimous unless otherwise indicated.

Senator Richard Finan, Ohio (Co-Chair)
Commissioner Loren Chumley, Tennessee (Co-Chair)
Michael J. Wehrle, Arkansas
Tom Atchley, Arkansas
James Turner, Indiana
Michael Landwer, Indiana
Don Cooper, Iowa
Kristi Magill, Iowa
Secretary Joan Wagnon, Kansas
Robert Cox, Kentucky
Richard Dobson, Kentucky
Dale Vettel, Michigan
Commissioner Dan Salamone, Minnesota
Cathy Wicks, Minnesota
Larry Wilke, Minnesota
Tom Gillaspie, Nebraska
Commissioner Mary Jane Egr, Nebraska
Anna Mitchell, North Carolina
Representative David Drovdal, North Dakota
Senator Dwight Cook, North Dakota
Representative Amstutz, Ohio
Commissioner Bill Wilkins, Ohio
Senator Angela Monson, Oklahoma
Commissioner Jerry Johnson, Oklahoma
Senator H. Paul Dennert, South Dakota
Representative Orville Smidt, South Dakota
Secretary Gary Viken, South Dakota
Commissioner Bruce Johnson, Utah
Craig Sandberg Utah
Delegate John Doyle, West Virginia
Dale Steager, West Virginia
Representative Roy Cohee, Wyoming
Dan Noble, Wyoming

I. Welcome

Senator Finan opened the meeting at 1:00 p.m. Following introduction of the delegates, approval of minutes of the May 2004 meeting of the Conforming States was moved by Arkansas, seconded by Iowa and passed.

II. Timeline for Conformance and Creation of Governing Board

Loren Chumley reviewed the *Timeline and Milestones for Creation of Governing Board* that was distributed to the delegates. Following Ms. Chumley's presentation, there was discussion of the relationship of effective dates of legislation to the timing of submission of petitions to the co-chairs of the Streamlined Sales Tax Implementing States. Bruce Johnson suggested the following schedule: submission of petitions by July 2, 2005, a meeting of the petitioning states on July 15 and an October 15 effective date for the Streamlined Sales and Use Tax Agreement (SSUTA). After discussion of business community review of petitions, Mr. Johnson commented on the need for sufficient time for public review of final petitions.

Joan Wagon moved that states be allowed to petition in advance of an effective date. This was seconded by Oklahoma and passed. After stating the motion, Ms. Wagon suggested that a meeting of the petitioning states be scheduled for early July 2005 for creation of the Governing Board on October 1, 2005. She added that states can vote, at a meeting of the petitioning states, after their effective date for their state.

In response to comments from Don Cooper, Angela Monson stated that a state can petition in advance of an effective date, but cannot be found to be in compliance prior to the effective date. A May 1 date for submission of certificates of compliance was moved by Kentucky, seconded by Indiana and passed. Bruce Johnson and Mary Jane Egr emphasized that May 1 is a deadline, not a target date, and that certificates must be complete by that time. In response to a comment from Angela Monson on the process for review of petitions, Loren Chumley noted that the Compliance Group of the Conforming States was created for this purpose. Ms. Chumley asked the delegates if they were comfortable with the Conforming States role in this and the group concurred with this perspective.

III. Discussion of Interim Operational Issues

Loren Chumley noted the need for administrative infrastructure and physical facilities to support efforts to implement of the SSUTA. Harley Duncan of the Federation of Tax Administrators (FTA) reviewed these requirements, as described in *Proposal for Organizational Support Services for the Conforming States Committee* that was distributed to the delegates. In particular, he noted the advantages of using an existing institution for support, and the need for full time, dedicated staff. He explained that the FTA board had approved the use of its office space in the Hall of the States for staff that was either hired by the conforming states or loaned by the states. FTA would also provide payroll and accounting support and be reimbursed for "out of pocket" costs. Mr. Duncan

proposed that this arrangement be accomplished under a Memorandum of Understanding between the FTA and the States. He expressed this as a temporary arrangement and suggested a one-year agreement with possibility of extension for an additional year.

Mr. Finan reported that a \$50,000 contribution to the Conforming States was approved at the recent NCSL annual meeting. He added that NGA is also considering a \$50,000 contribution. In addition, there is approximately \$75,000 in the Streamlined Sales Tax Project (SSTP) account that may be available for the Conforming States. Loren Chumley noted recent discussion of a near-term contribution of \$20,000 per state, but commented that the group is probably not ready to accept donations from states until the organization is formally established. In response to a question on timing, Mr. Finan said that he hopes in interim director will be in place by October 1.

Oklahoma then moved that the states proceed with an agreement with the FTA. This was seconded by Ohio and passed.

Harley Duncan then explained that states have used loaned employees in the past and that a loaned employee could be in place by September 1, 2004. He added that this should be a senior level person from a conforming state who has experience with the SSTP. He asked that any nominations for this position be made by August 13.

Loren Chumley then moved that a committee be created to hire an interim director. This was seconded by Kansas and passed.

Ms. Chumley then noted that, as defined in Section 307 of the Agreement, creation of databases is not required prior to entering into the Agreement

IV. Review by Organizational Structure Committee

Joan Wagon recognized the contributions of the organizational structure work group, NCSL and Richard Prem to the *Proposed Bylaws of the Streamlined Sales Tax Governing Board, Inc.* She described this as a skeletal draft that, after the meeting, would serve as a working draft. She also noted that the bylaws and incorporation documents will serve as the controlling documents for the organization.

Ms. Wagon noted that there was no funding formula included in the bylaws and that the group suggests formation of the organization under the requirements of Section 501(c)(6) of the Internal Revenue Code. She then reviewed each article of the bylaws. Delegate Doyle commented that five regions would be preferable to four. This led to discussion of the organization of the FTA board, which consists of 18 directors from 4 regions, with a minimum of four from each region.

Loren Chumley commended Joan Wagon for the presentation. Senator Finan added that the bylaws should be a working document; and that they should not be finalized until the organization is created. Joan Wagon added that the place of incorporation also will

affect requirements for bylaws. Nebraska then moved and Kansas seconded the approval of the presentation as a starting draft. This was passed.

Ms. Chumley suggested that the committee remove references to regions, but allow for adequate geographic representation. Delegate Doyle expressed his comfort with this approach.

Prior to and following passage of the motion, there was discussion of officer succession and the length of board member terms (one vs. two years). There was also discussion of the authority of the Executive Committee relative to the Governing Board. Joan Wagon explained that the Executive Committee would function in a manner similar to a corporate board of directors and that it is not workable to have the Governing Board approve all of the actions of the Executive Committee, such as ratification of contracts.

V. Review by Funding Committee

A. Interim Funding and Expenditures

Discussion of this topic occurred earlier in the meeting.

B. Discussion of Permanent Dues Structure and Review of Dues Structures from Other State Tax Organizations

Harley Duncan then reviewed possibilities for structuring state dues under the SSUTA and noted that most organizations, except for the International Fuels Tax Agreement (IFTA), have an accommodation for size of the jurisdiction. Discussion on the availability of state and local sales tax data followed. Harley Duncan noted the lag in availability of local sales tax data from the U.S. Census. Dan Bucks of the Multistate Tax Commission noted the MTC obtains state and local sales tax revenue data annually from the States. Support was expressed by Michigan and Oklahoma to include local as well as state sales tax revenue in the formula. Ohio moved to allocate one-half of expenditures by state and one-half by state and local sales tax revenues. This was seconded by Iowa and passed.

The meeting was recessed at 4:40 p.m. on August 5 and resumed at 8:30 a.m. on August 6.

C. Discussion of Central Registration System and Costs

Dan Bucks provided a review of the development of the combined registration system, including costs associated with this development. He noted that when the SSUTA is activated, the combined registration system will be the most visible part of the system for taxpayers (vendors). He also reviewed the history of the MTC with multistate registration. This has occurred formally since 1990 with joint voluntary disclosure agreements, that set the legal terms for registration for sellers who participate in these agreements. The online combined registration

system being developed by the MTC includes the long path, or normal registration system that was already being developed by the MTC prior to any requests from the SSTP. It now includes the short path, or streamlined combined registration system that could be used by those collecting voluntarily under the SSUTA. The same security systems and telecommunications infrastructure will be used to support both the long path and short path systems.

In response to a question from Senator Finan, Dan Bucks stated that with the current January 1 target date, the system would be in the testing phase this fall. He added that the MTC is fairly far along with the development work. He added the SSTP turned to the MTC for this development work after it was recognized that there was not sufficient interest from private vendors in developing the system. Loren Chumley noted that maintenance of the centralized registration system will be one of the largest items in the Implementing States budget and that it makes business sense to combine the short path and long path systems. In response a question from Ms. Chumley, Mr. Bucks stated that, at the point, the MTC is supporting the development cost. With no unexpected delays, Mr. Bucks expects that the Governing Board could assume responsibility for these costs when it is established.

Steve Kranz of the Council on State Taxation then expressed his understanding that the combined registration system would be turned over to and operated by the Governing Board. In addition, he expressed concerns about misuse of taxpayer data by the MTC and the expectation that businesses would be less likely to use the combined registration system if it is operated by the MTC.

Dan Bucks responded that operation of the system by the Governing Board had not been discussed and that the system will be operated in accordance with the rules of the streamlined system. He reiterated the MTC's history with joint registration and the cost advantages of basing the streamlined registration system on the security and telecommunications infrastructure in place at the MTC. He added that most of the concerns about use of information from the registration system are at the state level, where the compliance work is done.

Senator Munson commended the MTC for its work on combined registration and asked if, once the streamlined registration system is established, the Governing Board could assume the operational responsibilities for its combined registration system. In his response, Mr. Bucks again stated the cost advantages of using the MTC's infrastructure for operation of the system.

Loren Chumley stated that the Governing Board has the responsibility to decide who provides services under the SSUTA; and that, on day one it has to have a registration system in place. She added that the longer term approach for registration may differ from the initial effort. After reviewing the history of the SSTP with joint registration, Bruce Johnson stated that the development by the MTC is consistent with the states' direction on joint registration and the effort to

avoid support of a large infrastructure with related overhead. Joan Wagon reinforced these comments by stating that the current direction makes sense and that “the MTC is our contractor.”

Senator Munson asked about the possibility of looking at the operation of the system from a short term and a long term standpoint, and asked whether, because of time constraints, MTC could continue its work for the short term until the Governing Board was fully operational.

The co-chairs said the matter would be reviewed further and discussed at the next meeting.

VI. Review by Technology Committee – Discussion of Request for Proposals

Scott Peterson reviewed the meetings of the technology committee and noted questions about evaluation of the financial soundness of contractees (certified service providers). He added that an evaluation of these firms by an accounting firm may be needed. He also stated that progress has been slower than expected, but that the group expects to have an RFP for review at an October meeting, possibly in a closed session. Mr. Peterson added that the contracts will be with the Governing Board. In response to questions about the timing of the process, Diane Hardt of Wisconsin stated that tentative awards could possibly be made in January. Charles Collins of Taxware stated that it is important for the States to “get this right” and encouraged them to move forward in the October time frame. He added that legislatures will need cost estimates by January. In response to comments from Jim Turner, Scott Peterson stated that with a two month response from early October that information can be provided to legislatures in early January.

Loren Chumley reminded the delegates that system audits for certified service providers will need representatives from every State.

VII. Review by Rules and Procedures Committee

B. Review of Voting Requirements

Jerry Johnson provided a review of voting requirements under the Agreement, as described in a handout to the delegates. He also reviewed IFTA rules on amendments and interpretations. Loren Chumley noted that the Conforming States and the Governing Board will have to make interpretations of the Agreement, so there will have to be rules that apply to this situation.

B. Status Report on Rules and Procedures Committee

Bruce Johnson provided a status report for the Rules and Procedures Committee and commented that the requirements for rules will be affected by the form of the bylaws. He also emphasized that a major focus of rules will be Article 8 of the SSUTA. In addition, he noted that Scott Peterson is looking at open meeting

requirements and that the group needs to know state requirements in this area. He asked the states, and specifically California, for their perspective on public notice and open meeting requirements. Loren Chumley noted that Bruce Johnson will draft rules for Article 9 and that Matt Tomalis will draft rules for Article 10 of the Agreement.

VIII. Report of Advisory Council Committee

Loren Chumley cited the provisions for advisory councils in the SSUTA, adding that there will be 42 state representatives to the State and Local Advisory Councils. She noted the need for appropriate local government representation in this group and reported that the SSTOP has been asked to look at this. She expects that the Governing Board will make the local government appointment and added that provisions for designation of the local government representative need to be made in the bylaws.

Bruce Johnson commented that, while both the State and Local and Business Taxpayer Advisory Boards will provide independent input to the Governing Board, it is also very helpful for these two groups to work closely together. The latter point was reinforced by Steve Kranz.

IX. Report of Tax Administration Committee

Anna Mitchell reported on this committee for Andy Sobol. She noted that with the short path registration there will be a cancellation feature, and this should be included in requirements for certified service providers. She also reported that the committee is getting input on the format for the taxability matrix, which will be specified by the Governing Board. She also noted that the SSTOP's work on exemptions will provide the foundation for the committee's effort in this area. Bruce Johnson asked that this committee coordinate with the rules committee on the taxability matrix and exemptions so that requirements can be incorporated into the rules.

X. Other Business

Loren Chumley noted that the only conforming states group not to meet so far is the Conformance (Compliance) Committee.

XI. Future Meetings

Loren Chumley reported that there will be a SSTOP meeting in Nashville, Tennessee on October 6, followed by a Conforming States meeting on October 7 and 8. The Conforming States will have a short session for the entire group and then split into work groups. They will then return to a combined session on Friday morning, October 8. It is expected that these will be open meetings, except for discussion of the RFP. Senator Finan encouraged the delegates to communicate with Ms. Chumley as she prepares the agenda. There was some discussion on participation via telephone for the work groups on October 7.

A possible November 9 or 15 meeting of the Implementing States was mentioned. Neal Osten reminded the group that there is a 60 day notice requirement for amendments to the Agreement.

The meeting was adjourned at 11:15 am.

Respectively Submitted

Ken Beier
Multistate Tax Commission